

1 BEFORE THE
2 ILLINOIS COMMERCE Commission

3 IN THE MATTER OF:)
4)
5 ILLINOIS COMMERCE COMMISSION ON)
6 ITS OWN MOTION,)
7)
8 vs.) Nos. 01-0488
9) through
10 CRYSTAL CLEAR WATER COMPANY) 01-0492

11 Chicago, Illinois
12 November 21, 2002

13 Met, pursuant to notice, at 12:30 p.m.

14 BEFORE:

15 MS. O'CONNELL-DIAZ, Administrative Law Judge

16 APPEARANCES:

17 LINDENBAUM, COFFMAN, KURLANDER &
18 BRISKY, LTD., by
19 MR. MARK L. GOLDSTEIN
20 3710 Commercial Avenue
21 Northbrook, Illinois 60062
22 appearing for Crystal Clear Water;

23 MR. JAMES WEGING
24 160 North LaSalle Street
25 Suite C-800
26 Chicago, Illinois 60601
27 appearing for Staff.

28 SULLIVAN REPORTING COMPANY, by
29 Rocio Garcia, CSR
30 License No. 084-004387

1	<u>I N D E X</u>		
2		Re-	Re- By
3	<u>Witnesses:</u>	<u>Direct</u> <u>Cross</u> <u>direct</u> <u>cross</u>	<u>Examiner</u>
4	NONE		
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10	<u>E X H I B I T S</u>		
11	<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
12	NONE		
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1 JUDE O'CONNELL-DIAZ: Pursuant to the direction
2 of the Illinois Commerce Commission, I now call
3 Docket 01-0488, 01-0489 through 01-0492.

4 May I have the appearance for the record,
5 please.

6 MR. GOLDSTEIN: On behalf of Crystal Clear Water
7 Company and the other water companies of TP
8 Matthews, Mark L. Goldstein, 3710 Commercial Avenue,
9 Northbrook, Illinois 60062, (847) 564-5573.

10 I would also like to add in the
11 appearance of Clyde Kurlander on behalf of the
12 aforesaid respondent water companies.

13 MR. WEGING: James Wearing, W-e-g-i-n-g, 160 North
14 LaSalle Street, Suite C-800, Chicago, Illinois
15 60601, (312) 793-2877, appearing on behalf of the
16 Commission Staff witnesses.

17 JUDGE O'CONNELL-DIAZ: That's all the
18 appearances?

19 MR. WEGING: Yes.

20 JUDGE O'CONNELL-DIAZ: Okay. Let the record
21 reflect that this is a status hearing. I'm kind of
22 in the dark. I believe I have on my schedule that

1 we are moving toward hearings in this matter and on
2 my calendar I have them for the week of December 9th
3 through the 11th.

4 I know the parties have been in
5 discussions so, Mr. Weging, maybe you could advise
6 me with regard to what the status and...

7 MR. WEGING: Well, there was a proposal on the
8 table to try to get that week for the -- in
9 completing this case. We came at -- we came at
10 loggerheads about scheduling the rest of this case.

11 I have -- I've been in contact with --
12 maybe the best way to explain it is, I was pursuing
13 the -- trying to complete up the evidentiary
14 portion, via vie, the direct case that's been filed
15 by Illinois American. I don't think, and
16 Mr. Goldstein would be better able to explain this,
17 they don't -- I believe that the companies do not
18 believe that that's the appropriate way of
19 proceeding. So we've been just at loggerheads.

20 I do have a schedule that I agreed to
21 with Sue Schultz from Illinois American concerning
22 the filing of testimony, via vie, their direct case.

1 That has not been actually accepted by the
2 respondents.

3 MR. GOLDSTEIN: It wasn't accepted by Illinois
4 American either, your schedule.

5 MR. WEGING: Yes, it was with no change.

6 MR. GOLDSTEIN: I believe it wasn't. I believe
7 you're incorrect but that's another story.

8 I think that as far as I'm concerned,
9 Mr. Kurlander sent out a very voluminous E-mail to
10 the parties setting forth what we believe are the
11 appropriate phases for this case.

12 Obviously, we're not in agreement with
13 the Staff with respect to how the case should
14 proceed. We've proposed that the case proceed at
15 least on a three phase face schedule and we also
16 propose that we do the cross-examination of Roy King
17 on December 17th and we have not had any
18 confirmation of that proposal from anyone.

19 MR. WEGING: Well, I only received this yesterday
20 although, frankly, with the number of E-mails if
21 Mr. Kurlander had sent it previously it could
22 conceivably have gotten buried somewhere.

1 To explain about Roy King, Mr. King has
2 decided to take early retirement and we really don't
3 have anyone on Staff who can just -- this is not a
4 case where we can get another accountant to make the
5 same changes in a rate case. It -- this -- his
6 testimony is very much heavily based on his time and
7 involvement with these particular utilities being
8 out there, et cetera. So we were seeking to
9 preserve his testimony irrespective of what else
10 happens in this case.

11 The problem, of course, is, Well, the
12 17th is acceptable to us, Roy King and
13 Mr. Goldstein. I don't know if the ALJ is available
14 on that date.

15 JUDGE O'CONNELL-DIAZ: I am available on that
16 date.

17 MR. WEGING: Because they are talking in terms of
18 pretty much an all day cross-examination of
19 Mr. King, I think.

20 MR. GOLDSTEIN: I would say that based upon the
21 fact that I'm going to do the cross-examination, I
22 believe that the examination will take half a day.

1 JUDGE O'CONNELL-DIAZ: Well, I am available that
2 day so given the fact that, you know, Mr. King is a
3 candidate for that and is, in fact, accepting the
4 early retirement package, you know, I think it would
5 a prudent thing to get that taken care of so that we
6 at least preserve that portion of the case.
7 Because, obviously, there are many facets to this
8 case so was Ms. Schultz -- the 17th talked --
9 spoke --

10 MR. WEGING: She --

11 JUDGE O'CONNELL-DIAZ: Is that a date that she
12 could live with or --

13 MR. WEGING: It was one of those expectable where
14 she probably will not be able to make it but since
15 Mr. King's testimony, at this point, is directed to
16 the -- mostly to the -- well, it's related somewhat
17 to the capable public utility in that choice but
18 it's mostly directed to TP Matthews companies.

19 She didn't feel that she had to be there.
20 She did talk about having someone else from Illinois
21 American present on the 17th. Whereas when we get
22 to scheduling the Illinois American testimony

1 obviously she'd definitely want us to be there
2 assuming it would get further on the Illinois
3 American direct case.

4 MR. GOLDSTEIN: Well --

5 JUDGE O'CONNELL-DIAZ: Okay. Well, then I think
6 we have an agreement then, December 17th, 9:30.

7 MR. WEGING: Fine.

8 MR. GOLDSTEIN: That's fine.

9 JUDGE O'CONNELL-DIAZ: 9:30 or 10:00?

10 MR. GOLDSTEIN: Either way is fine with me.

11 MR. WEGING: That would be fine with me.

12 JUDGE O'CONNELL-DIAZ: Let's do it 9:30 so we can
13 allow enough time to complete whatever we need to
14 complete that day.

15 MR. GOLDSTEIN: Well, I guess the next thing on
16 my plate would be some inquiry to Staff when their
17 testimony will be coming in with respect to IWC's
18 testimony given in this proceeding or posed.

19 MR. WEGING: Well, I had sent to the parties the
20 suggestion that anyone seeking the final responsive
21 testimony to Illinois American do so by December
22 20th. I had suggested to Sue Schultz the rebuttal

1 be January 15th and she responded back that, how
2 about January 31st, which is acceptable to Staff.

3 MR. GOLDSTEIN: Well --

4 MR. WEGING: I -- we do not have a commitment
5 though from the respondents on that but, of course,
6 then again the respondents don't actually have to
7 file testimony. They are a party. They have a
8 right to file if they want but they don't have to.

9 MR. GOLDSTEIN: Well, you know, this is a
10 proceeding on -- as a citation under a peculiar
11 section of the Public Utilities Act. And I guess we
12 could argue all day long as to its constitutionality
13 and this, that, and the other thing. But the bottom
14 line of it all is that somewhere along the line,
15 there's a high likelihood that these utilities will
16 be taken away from my client and I have to ensure
17 that he be given every opportunity for having due
18 process. And I think insofar as procedural due
19 process is concerned, I think the Staff should file
20 first.

21 We have propounded data requests to Staff
22 trying to determine what their position is and most

1 of the time the responses are that they have no
2 position and they haven't set it forth yet and when
3 the time is right they will do so. Well, the time
4 is now. We'd like to know what their position is so
5 we can act accordingly in our case, and we have
6 every right to do so.

7 And so what I would propose is that you
8 should set a date for the Staff of the Commission to
9 file its testimony with respect to Illinois
10 American, give us two weeks thereafter to file
11 whatever we're going to file and then give Illinois
12 American two weeks after that to file its reply or
13 rebuttal.

14 MR. WEGING: Staff is, of course, not entirely in
15 agreement with that because essentially here on
16 these utilities are attempting to make the Staff
17 also responsible for Illinois American's position.

18 I -- we do not believe the statute or
19 even due process would allow the utilities to treat
20 whatever position Staff may take, via vie, Illinois
21 American's case and then have a response to the fact
22 that we accept or reject parts of it or whatever,

1 they -- they're trying to seek to become sort of
2 like the final word on this, via vie, Staff's
3 testimony, whereas the issue is Illinois American
4 has set forth their testimony and position. Anyone
5 who wants to respond to that should respond
6 simultaneously and then Illinois American who has
7 statutory right to be -- who has the statutory
8 burden on their issues should have rebuttal.

9 The -- I mean, if --

10 MR. GOLDSTEIN: Well, isn't this exactly what I
11 said?

12 MR. WEGING: No.

13 MR. GOLDSTEIN: Of course --

14 MR. WEGING: You said --

15 MR. GOLDSTEIN: -- it is.

16 MR. WEGING: Why do you need --

17 MR. GOLDSTEIN: Well, I'm giving --

18 MR. WEGING: -- Staff's testimony?

19 MR. GOLDSTEIN: I'm giving Illinois American the
20 last say on its own case and in whatever it has to
21 prove or not prove as part of the initial phase of
22 this proceeding. That's all I'm saying and we have

1 every right to review your testimony before we make
2 up our minds as to what our position is. It's not
3 you that's going to be loosing these utilities.
4 It's my client.

5 MR. WEGING: The issues involving Illinois
6 American has nothing to do with whether or not TP
7 Matthews loses the utility. It has to do with the
8 Commission choosing who takes over. Assuming the
9 Commission both finds for -- on the Staff's case
10 that the -- these utilities should be taken over and
11 to decides -- to accepts Staff's recommendation of
12 remedy that someone do so.

13 The fact is is that the -- these
14 companies do not have a veto power over what the
15 Commission -- who the Commission chooses to take
16 over if the Commission finds that these utilities
17 should be taken over.

18 MR. GOLDSTEIN: We're not asking for any kind of
19 veto power. All we're asking for is procedural due
20 process, pure and simple.

21 The testimony given -- posed by Illinois
22 American thus far is very far ranging. It covers

1 adequacy, inadequacy. It covers proximity. It
2 covers valuation. It covers all kinds of topics and
3 we believe -- we have a right to know what Staff's
4 position is since we cannot find out via data
5 request what their position is before we file any
6 further testimony in this proceeding.

7 MR. WEGING: Yes.

8 MR. GOLDSTEIN: And I think that's our right and
9 I'm sorry that I don't agree with Mr. Weling on this
10 point.

11 MR. WEGING: In other words -- I mean, this is
12 one of the kind of issues --

13 MR. GOLDSTEIN: Is it sec- -- you have a secret
14 position?

15 MR. WEGING: They have asked us what our
16 position --

17 MR. GOLDSTEIN: Are you going to go along with
18 Illinois American?

19 MR. WEGING: Counsel, let --

20 MR. GOLDSTEIN: Tell us. Just tell us flat out
21 and then we'll go from there.

22 MR. WEGING: Counsel has asked us continuing

1 series of questions about what Staff's position --

2 MR. GOLDSTEIN: And you haven't answered any of

3 them, Jim.

4 MR. WEGING: Because we haven't filed testimony

5 on it.

6 MR. GOLDSTEIN: You don't have to file testimony.

7 You were going to file testimony November 9th. You

8 had a position before then.

9 MR. WEGING: And you didn't accept that schedule

10 either.

11 MR. GOLDSTEIN: But you had -- you have to know

12 what your position is.

13 MR. WEGING: Why? The issue on Illinois

14 American's case is whether or not you are going to

15 take any -- put any evidence in, via vie, Illinois

16 American's case.

17 It has nothing to do with whether or not

18 Staff accepts, rejects or --

19 MR. GOLDSTEIN: It may have all -- everything in

20 the world to do with it. You don't know that.

21 MR. WEGING: And what -- why --

22 MR. GOLDSTEIN: Put the testimony out there and

1 we'll just see whether it does or not. I don't know
2 what your testimony is. When you tell us what the
3 testimony is, we'll make a judgment as to what we
4 need to do in order to protect our interests in this
5 proceeding.

6 MR. WEGING: And let's assume for the sake of
7 argument, let's say that our testimony is, we agree
8 with a hundred percent of everything Illinois
9 American says, how the heck does that change what
10 you have to put in evidence in response to Illinois
11 American's --

12 MR. GOLDSTEIN: It may --

13 MR. WEGING: -- evidence?

14 MR. GOLDSTEIN: -- or it may not change
15 whatever --

16 MR. WEGING: In other words, you intend to attack
17 Staff's rather than Illinois American's evidence as
18 if we are the ones supporting Illinois American's
19 testimony --

20 MR. GOLDSTEIN: Well --

21 MR. WEGING: -- and that Illinois American and
22 Staff are somehow joined as a party in this case.

1 MR. GOLDSTEIN: I don't understand the last point
2 at all.

3 Purely and simply, I think we -- I hate
4 to keep reiterating the same thing, that we have a
5 right to see Staff's position before it's our turn
6 to respond to it.

7 MR. WEGING: On testimony?

8 MR. GOLDSTEIN: Yes.

9 MR. WEGING: On testimony?

10 MR. GOLDSTEIN: It could be -- we could take all
11 kinds of avenues in --

12 MR. WEGING: Well, you have.

13 MR. GOLDSTEIN: -- responding to your position.

14 MR. WEGING: But it isn't our position. It's our
15 position, via vie, Illinois American's positions and
16 testimony. And we wouldn't actually be disclosing
17 legal position in our testimony anyway. We're just
18 dealing with the evidentiary portion of the case
19 still.

20 MR. GOLDSTEIN: Well --

21 MR. WEGING: Obviously, certain --

22 MR. GOLDSTEIN: But --

1 MR. WEGING: And this will indicate certain --

2 MR. GOLDSTEIN: But unfortunately --

3 MR. WEGING: -- positions.

4 MR. GOLDSTEIN: -- for all of us, the evidentiary

5 portion of this case deals with a lot of legal

6 issues and whether --

7 MR. WEGING: Well, they won't be solved by

8 evidence or hearing but only by briefing .

9 MR. GOLDSTEIN: Not necessarily true.

10 MR. WEGING: Well, can you excuse me for a

11 second?

12 (Off the record.)

13 MR. WEGING: Apparently Sue Schultz is trying to

14 get connected to us and she doesn't have the phone

15 number or pass code. I have it on my computer but

16 I'd have to go upstairs to get it for her to --

17 MR. GOLDSTEIN: Okay.

18 JUDGE O'CONNELL-DIAZ: Fine.

19 MR. WEGING: Thank you.

20 (Off the record.)

21 JUDGE O'CONNELL-DIAZ: In your absence I was

22 asking what these dates were. I was trying to jot

1 them down because you guys have been E-mailing back
2 and forth and I'm not --

3 MR. WEGING: Well --

4 JUDGE O'CONNELL-DIAZ: -- to any of that so this
5 is --

6 MR. WEGING: Well, the only dates that have ever
7 been proposed has been proposed by Staff.
8 Mr. Kurlander has a suggestion about handling this
9 case in four parts without any particular dates
10 attached to it. Actually, those -- since
11 Mr. Goldstein is apparently willing to go ahead with
12 the completion of the filing of testimony, although
13 we're obviously in loggerheads on the one issue,
14 that would seem to be the way to go.

15 Like I said, Staff was willing to prepare
16 and file its testimony by December 20th. Sue
17 Schultz asked for January 31st, partially because
18 we're dealing with Christmas and New Years in
19 between that time.

20 MR. GOLDSTEIN: And in between that time, between
21 the 20th and the 31st, we'll be happy to file
22 whatever we're going to file.

1 MR. WEGING: Yes, but I don't know if that would
2 give Sue Schultz sufficient time to res- -- file
3 rebuttal testimony.

4 MR. GOLDSTEIN: Well, we'll find out them if she
5 hooks up. Quite frankly, if she needs more time,
6 we're amenable to whatever she wants.

7 JUDGE O'CONNELL-DIAZ: Well, then was she calling
8 in or what was the --

9 MR. WEGING: Well, she was -- my secretary was
10 giving her the phone number and the pass code which
11 is an 866 number for some reason.

12 MR. GOLDSTEIN: Do we need all this on the
13 record?

14 JUDGE O'CONNELL-DIAZ: I'm just trying to give
15 her some pages.

16 (Whereupon, a discussion
17 was had off the record.)

18 JUDGE O'CONNELL-DIAZ: Okay. Well there was an
19 attempt to hook up Ms. Schultz but our hearing was
20 scheduled for 12:30. It is 1:00 o'clock and we're
21 going to move forward.

22 It seems that the parties have -- I think

1 I have to use that term reluctantly -- agreed on a
2 schedule to move forward, at least in the next month
3 and a half, shall we say? The schedule as such is
4 that December 17th, we would have a hearing that
5 would begin at 9:30 in the morning to have the
6 cross-examination of Staff Witness King.

7 December 20th, Staff would file
8 testimony. January 15th, respondent would file
9 testimony and January 31st, Illinois American
10 would --

11 (Interruption.)

12 (Off the record.)

13 JUDGE O'CONNELL-DIAZ: January 31st would be the
14 Illinois American testimonial filing date.

15 I think for purposes of setting this, we
16 are already going to continue this to the 17th and
17 at that point, we'll revisit what the next step
18 would be in this case -- cases.

19 Okay. Anything further?

20 MR. WEGING: There is one thing Staff has to
21 raise and that's the question of the supplemental
22 citation.

1 As you may know, Mr. King's testimony got
2 involved in the, I'll call the electric bill issue.
3 Obviously, until we know it's either up or down -- I
4 mean, if it's down, then we'd have to removal all
5 that testimony. If it's up, well, then it's in, and
6 if we don't have a ruling then we'll have to put it
7 in until we get a ruling. And, frankly, part of our
8 reason why it was being raised by Staff has to do
9 with how the matter would -- was discovered by Staff
10 in its discovery within this case which means that
11 although, obviously, it can be examined in a
12 separate citation proceeding, Staff will loose the
13 evidence and the facts of how this thing arose
14 within this case because Mr. King would be gone.

15 Obviously, I don't --

16 MR. GOLDSTEIN: Well --

17 MR. WEGING: I, you know, we propose --

18 MR. GOLDSTEIN: I would have to confer with my
19 client, Mr. Weging, but I would say that the
20 electric bills that are outstanding for the five
21 utilities are whatever they are. You can get a copy
22 of them as readily as anybody else. I assume that

1 you're in contact with the appropriate personnel at
2 ComEd. Get copies of the bills.

3 MR. WEGING: Well, we already have and have
4 already --

5 MR. GOLDSTEIN: Isn't that the best evidence of
6 anything?

7 MR. WEGING: -- and we would like to proceed in
8 this case rather than to have to duplicate it later
9 on.

10 MR. GOLDSTEIN: Well -- but it has no bearing on
11 the citation that was issued in this proceeding.

12 MR. WEGING: Well, that's why --

13 MR. GOLDSTEIN: Which was the --

14 MR. WEGING: -- we need --

15 MR. GOLDSTEIN: -- then off shoot of --

16 MR. WEGING: -- a supplemental citation.

17 MR. GOLDSTEIN: -- of everything else that's
18 going on.

19 JUDGE O'CONNELL-DIAZ: Well, I'm going to reserve
20 ruling on that right now.

21 Okay. Then we are scheduled now for the
22 17th at 9:30 for Mr. King's cross-examination.

1 MR. GOLDSTEIN: Right.

2 JUDGE O'CONNELL-DIAZ: Okay. Thank you.

3 (Whereupon, the above-entitled
4 matter was continued to December
5 17, 2002 at 9:30 o'clock a.m.)

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